

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-213209

DATE: June 8, 1984

MATTER OF: Bank Street College of Education

DIGEST:

1. Where statute vests authority in agency Director to award contracts, Director may exercise his contracting authority over lower level contracting officials and make the award selection whenever he believes that such action will further the agency's statutory functions.
2. Although decision of agency Director acting as a selection official must be consistent with the solicitation's evaluation criteria and requirements and must have a rational basis, such official is not bound by recommendations of an evaluation board even though such board may be composed of working level officials who normally have the technical expertise required for technical evaluations.
3. In a dispute between the protester and the contracting agency over the technical superiority of the awardee's proposal, which is in essence a difference of opinion concerning the relative merits of the protester's and the awardee's technical approaches, GAO will not disturb the agency's decision as to which of the two proposals is better suited to complete the project contemplated by the RFP where the protester has not shown that decision to be unreasonable or in violation of the procurement statutes or regulations.
4. Where the RFP estimate placed offerors on notice regarding the appropriate level of effort to operate a School Technology Center and the protester proposed a level of effort almost 50 percent below that estimate while the awardee proposed a level of effort much closer to the RFP's estimate, the selecting official could reasonably conclude that the awardee's proposal was superior in this respect.

029068/124354

5. Where an offeror's proposed level of effort was considered acceptable, the agency was not required to discuss this subject with the offeror during competitive range discussions, nor was it required to do so later when the selection official decided he preferred a greater level of effort proposed by another offeror.
6. Where the RFP required the successful offeror to investigate the application of non-computer technologies to facilitate mathematics and science learning, GAO has no basis to question the selection official's determination that the awardee offered a more innovative approach to studying a broader mix of these technologies than did the protester.
7. Awardee's plan to work with three or four local school districts during the first 3 years of the Center's operation satisfied the RFP's requirement that local schools be significantly involved in the Center's activities. Moreover, the selection official could reasonably conclude that the awardee--having executed cooperative agreements with the local schools and joined them as part of its consortium--was more likely to be able to expeditiously establish a presence in the schools as required by the RFP, than was the protester who did not propose to execute any cooperative agreements until after contract award.
8. Whether the awardee's proposed management and organizational structure is better suited to the tasks to be performed under the RFP than the protester's is a question calling for the informed judgment of the selection official whose determination will not be disturbed where it is not shown to be unreasonable.
9. Award of a cost-reimbursement contract to a higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the RFP's evaluation criteria and the agency determined that the higher cost was justified by the awardee's higher proposed level of effort and its eclectic and more costly research approach.

10. Contracting officer's failure to follow internal agency policy guidance regarding disclosure of government cost estimates is not subject to objection by GAO in a bid protest. It is not improper for an agency to disclose during discussions the agency's cost goal in order to reach a fair and reasonable cost so long as no offeror's competitive standing is divulged. Moreover, it was not unfair treatment of offerors for the agency to discuss the government's cost estimate with the awardee and one other offeror but not with the protester since the purpose of the discussion was to encourage those offerors to lower their proposed costs; the protester's proposed costs were already below the government estimate.

Bank Street College of Education protests the award of a contract to Harvard University under request for proposals (RFP) No. NIE-R-83-0009 issued by the National Institute of Education (NIE). The RFP sought offers for a cost-type contract to create a School Technology Center that would perform research and provide technical assistance to increase achievement of students in elementary and secondary schools through technology.

Bank Street complains that the NIE Director substituted himself for the contracting officer and the proposal evaluators and improperly made award to Harvard, the highest-cost, second-ranked offeror. Further, the protester contends that the Director, in making the selection, relied on factors outside the solicitation evaluation criteria and requirements, and complains that the NIE negotiator revealed the agency's cost estimate to Harvard but not to Bank Street.

We find that the Director's actions were proper and that his selection decision was consistent with the solicitation's requirements and is reasonably supported by the record. We therefore deny the protest.

#### BACKGROUND

The agency issued the solicitation on June 6, 1983, seeking proposals for a 5-year effort to establish and operate the Center. The RFP specified that the Center would engage in five major tasks:

- (1) Develop a research agenda to improve educational achievement through technology and update it annually.
- (2) Conduct a program of subject-oriented research and related activities which focus on (a) the use of technology for instruction in math and science and (b) computers as an object of study in such topics as computer literacy, computer programming and computer science.
- (3) Conduct a program of basic and applied research having clear long-range implications for enhancing and stimulating advances in technology's capacity to increase student learning and achievement.
- (4) Provide graduate-level training to increase the number of experts in educational technology.
- (5) Develop and implement a dissemination strategy designed to meet the needs of teachers, school administrators, researchers, policy-makers and parents in all subject areas covered.

The RFP stated that in considering proposals for negotiation and award, technical quality would be given greater priority than cost, and it set forth the following major criteria along with their relative weights, against which the technical proposals would be evaluated:

<u>Criteria</u>	<u>Points</u>
a. General Understanding	10
b. Technical Approach	35
c. School-Based Activities	20
d. Structural, Organization and Management Factors	15
e. Staffing	20

The agency convened a Project Review Board (PRB), consisting of five NIE evaluators and five evaluators from outside NIE to evaluate the technical proposals. The PRB

reviewed the six proposals received and ranked them as follows:

<u>Offeror</u>	<u>Average Technical Score</u>	<u>Proposed Cost</u>
MIT	88.5	\$10,963,161
Bank Street	86.6	4,498,028
Harvard	80.3	9,182,480
University of Massachusetts	62.1	7,641,498
University of Lowell	47.3	17,100,803
University of Oregon	34.3	885,803 (1st year effort only)

The PRB found the proposals of MIT, Bank Street, and Harvard to be technically acceptable and it recommended that these three offerors be included in the competitive range. The contracting officer accepted the PRB's recommendation and commenced negotiations with these offerors.

NIE sent written questions to the three offerors in the competitive range concerning both technical and cost aspects of their proposals. The negotiation letter to Harvard stated that its cost proposal exceeded the government estimate by approximately \$2 million and its proposed first-year cost exceeded the available funds by 50 percent. The letter suggested that Harvard attempt to reduce its proposed costs. The letter to MIT contained similar statements regarding costs. The record shows that the contracting officer orally suggested to Bank Street that its travel costs were too low. In addition to asking for written responses, the negotiation letters requested that each offeror make an oral presentation of its tentative responses to the PRB.

After receipt of the best and final offers, including the offerors' responses to the negotiation questions, the PRB rescored the final proposals with the following results:

<u>Offeror</u>	<u>Average Technical Score</u>	<u>Proposed Cost</u>
Bank Street	88.4	\$4,478,855
Harvard	80.9	7,681,534
MIT	82.1	7,188,030

Of the ten evaluators, five ranked Bank Street first, four ranked Harvard first and one evaluator ranked MIT first.<sup>1</sup> The PRB recommended award to Bank Street.

On September 16, the Director met with the contracting officer and the PRB chairman to discuss the PRB's recommendation. At the conclusion of the meeting, the Director requested that the PRB chairman provide him with an analysis of certain aspects of the proposals, including an analysis of why Bank Street's costs were lower than the government's estimate of \$7,200,000. The chairman subsequently reported that Bank Street's lower cost was primarily due to its lower staffing levels, less travel, use of consultants, and cost sharing. After further meetings between the Director, his staff and the contracting officer, the Director concluded that Harvard's proposal was technically superior. On September 29, Bank Street protested this determination to the agency and to this Office. On September 30, the agency awarded the contract to Harvard.

#### NIE DIRECTOR'S CONTRACTING AUTHORITY

Bank Street contends that the Director undermined the integrity of the procurement process by intervening in this procurement and awarding the contract to Harvard in spite of the PRB and contracting officer recommendations that Bank Street receive the contract. It argues that the procedures for selecting a contractor contemplate the appointment of a contracting officer with the overall authority to bind the government and who, with the assistance of the agency program staff and a technical review group, is to conduct a business and technical assessment of the proposals and reach a decision as to the award. Bank Street contends that the Director's role in this process is supervisory only. Consistent with this role, he may only intervene in the procurement process when the standard procedures have not been properly followed. Bank Street argues that since the standard procedures were being followed up to the point of the Director's intervention, his actions were improper.

---

<sup>1</sup> This ranking is based on technical considerations only. When asked to take cost as well as technical merit into consideration, seven ranked Bank Street first and three ranked Harvard first.

While it may be true that in most procurements the contracting officer ultimately makes the award decision, the contracting officer derives the power to bind the government from the general grant of contracting authority to the agency head. 41 U.S.C. § 251 et seq. (1976). Here, 20 U.S.C. § 1221e(1) (1982) authorizes the Director to conduct educational research in order to carry out NIE's objectives of improving education in the United States. Further, 20 U.S.C. § 1221e(f)(1) vests authority in the Director to, among other things, enter into contracts to carry out NIE's functions.

We do not agree with Bank Street's contention that the Director may only exercise his contracting authority when the "standard contracting procedures have not been properly followed." Rather, as NIE's ultimate contracting authority, the Director has the discretion to exercise his contracting authority whenever he thinks that it will further NIE's statutory objectives. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325 (agency official's authority to direct and supervise all agency functions necessarily encompasses the procurement operations, including the evaluation of proposals and the award of contracts, of lower echelon components). Thus, we have no basis to object to the Director's participation in the selection process.

#### SELECTION DECISION

The PRB recommended that the contract be awarded to Bank Street based on its high technical rating (88.4 for Bank Street; 80.9 for Harvard) and low cost. Specifically, the PRB found that Bank Street's proposal was strong in its practical approach to school-related technology topics, its clear presentation of the tasks to be performed, the excellence of its Director and senior staff and its integration of diverse talents into one Center. On the other hand, the PRB did find fault with Bank Street's proposal in its relatively narrow orientation to substantive issues in science and math education and its vagueness regarding the location of its school-based research. While the PRB noted Bank Street's relatively low cost estimate, it perceived "no difference in the overall level of technical work" proposed by Bank Street and Harvard.

The PRB found that second-ranked Harvard's<sup>2</sup> greatest strengths lay in its depth of understanding of current issues in math, science and computers, the quality of its staff and leadership, the innovative nature of its proposal, its use of television, its "long term" outlook and its particular New England identity. The Board found weakness, however, in Harvard's highly centralized organization, its proposal to initially conduct school-based research in only three school districts adjacent to Boston and the possible lack of a long-term commitment of its proposed co-director, a visiting professor at Harvard.

The Director reviewed the PRB's numerical ratings and the evaluators' narrative comments and, in spite of the PRB's recommendation, found the PRB ranking of the Bank Street and Harvard proposals to be close and inconclusive. The Director also independently reviewed the Harvard and Bank Street proposals and concluded that Harvard's proposal was superior.

In general, the Director found that Harvard's proposal set forth a strong integrated program of activities providing a cohesive framework for long-range research in educational technology and struck a good balance between basic and applied research. According to the Director, Bank Street's proposal offered a narrow approach relying on quick solutions based on existing technology and general learning theory. Further, the Director stated that while Bank Street focused its technology activities almost exclusively on computers, Harvard's approach was broader, involving work in video-disks and television as well as computers. The Director also felt that Harvard proposed a more comprehensive dissemination plan and concluded that its plan for working with local schools was better, as Harvard had identified those schools with which it intended to work and included them in its consortium, while Bank Street proposed to identify those schools after award. Further, the Director noted that Harvard's proposed centralized organization based on existing working relationships among its consortium institutions was superior to Bank Street's proposed team structure involving

---

<sup>2</sup> While MIT received a higher numerical score than Harvard, more evaluators ranked Harvard as their choice for award.



newly associated members. He also pointed out that Harvard's consortium was far more diverse and prestigious than Bank Street's more limited arrangement. Finally, the Director found that Harvard was proposing substantially greater staff effort than Bank Street. The greater level of effort proposed by Harvard for all program years and at virtually all staff levels was, in the Director's view, more in keeping with the intent of the RFP and more likely to result in a true national Center. Based on these factors, the Director decided that Harvard's technical superiority justified award to it despite its higher proposed costs.<sup>3</sup>

The selection official, here the Director, is not bound by the recommendation of evaluators, and as a general rule our Office will defer to such an official's judgment, even when that official disagrees with an assessment of technical superiority made by a working level evaluation board or individuals who normally may be expected to have the technical expertise required for such evaluations. Boone, Young & Associates, Inc., B-199540.3, November 16, 1982, 82-2 CPD 443. The selection decision, and the manner in which such an official uses the results of the technical and cost evaluations and the extent, if any, to which one is sacrificed for the other are governed only by the tests of rationality and consistency with established evaluation factors.<sup>4</sup> Grey Advertising, supra; BDM Corporation, B-211129, August 23, 1983, 83-2 CPD 234.

Bank Street contends that the Director's evaluation was irrational and inconsistent with the terms of the RFP. Specifically, Bank Street argues that the Director improperly emphasized differences between its and Harvard's proposed levels of effort; inaccurately and unfairly

---

<sup>3</sup> The Director noted that Harvard's higher cost was due in large part to its greater proposed level of effort.

<sup>4</sup> Despite Bank Street's arguments to the contrary, this principle clearly governs this case where the Director selected a proposal rated lower technically by the PRB and costing more than the proposal originally chosen. Here, the Director concluded that the Harvard proposal was technically superior and that superiority justified the additional cost. That conclusion must pass these tests.

downgraded Bank Street for its alleged failure to deal with multiple technologies; failed to consider Harvard's allegedly inadequate plan for working with local schools and improperly downgraded Bank Street for failing to identify the local schools with which it would work; incorrectly concluded that Harvard's proposed dissemination plans were superior to those offered by the protester and erroneously found that Harvard's consortium was more desirable because it was allegedly better organized, larger and more prestigious.

In considering protests such as this, we do not conduct a de novo review of the technical proposals or make an independent determination of their acceptability or relative merit. Cadillac Gage Company, B-209102, July 15, 1983, 83-2 CPD 96. That is the function of the selection official, who is to exercise informed judgment and sound discretion. Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37. Our review is limited to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Cadillac Gage Company supra. We will question a contracting official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. The fact that the protester or the evaluators disagree with the selection official's conclusion does not in itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117. As far as consistency with the evaluation criteria is concerned, while the selection official may not judge the merits of proposals based on criteria that offerors were not advised would be considered, the official may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated criteria. Science Management Corporation, B-207670, September 23, 1983, 83-2 CPD 362.

At the outset, Bank Street contends that since the grounds for the Director's decision are contained in his September 28 decision memorandum, we should consider only this document in determining whether the Director's decision was reasonable and should not consider any rationale

prepared in response to Bank Street's protest. We do not agree. In reviewing procurement actions we look to see if the procurement action is supportable, not whether it was properly supported at the time it was taken. See, e.g., Honeywell Information Systems, Inc.--Reconsideration, B-193177.2, January 19, 1981, 81-1 CPD 26; EMI Medical Inc.; Picker Corporation, B-195487, February 6, 1980, 80-1 CPD 96. Thus, we will consider all of the agency's arguments in support of its selection.

#### Level of Effort

The Director selected Harvard in part because the level of effort in the Harvard proposal was more closely in line with the estimates included in the RFP than was the lower level proposed by Bank Street. The Director concluded that Harvard's greater proposed level of effort made it more likely that Harvard would develop the type of Center envisioned by the RFP.

Section I(4) of the RFP provided in part:

"Estimates for the level of effort required to carry out the work in each of the first three years are given below. Funding for the fourth and fifth year is estimated to be equal to that for the third. The government presents this description of the level of effort as only one example of how to carry out the scope of the work. Offerors are expected to make their own independent assessments of the resources required to perform the stated tasks.

. . . . .

All estimates below are stated in terms of full-time (12 month) positions. . . . Offerors may adapt these estimates to their own needs. For example, they may propose a different mix of staff types and/or full-time and part-time staff as desired. (Emphasis in original.)

The RFP's estimated level of effort, and Harvard and Bank Street's proposed levels of effort were as follows:

	<u>Year</u>				
<u>NIE estimate</u>	1	2	3	4	5
Director	1.0	1.0	1.0	1.0	1.0
Total Professional staff*	8.0	13.0	29.0	29.0	29.0
 <u>Harvard</u>					
Director	1.2	1.4	1.4	1.4	1.4
Total Professional Staff*	6.0	9.65	19.89	20.63	20.63
 <u>Bank Street</u>					
Director	0.6	0.6	0.75	0.75	0.8
Total Professional Staff*	7.0	8.18	10.89	11.91	12.35

Bank Street contends that the Director's conclusion was improper because the RFP merely suggested certain staffing requirements which the Director changed into hard guidelines against which Bank Street's proposed level of effort was compared. The protester argues that this procedure was defective because the RFP's estimates were "based on uneducated guesswork by the NIE staff," and the Director failed to relate his comparative assessment of the offerors' proposed levels of effort with their ability to perform the Center's functions and failed to indicate his basis for concluding that Bank Street could not perform those functions within its proposed level of effort. Bank Street also contends that if NIE believed that its proposal reflected an insufficient level of effort, NIE should have informed Bank Street of this deficiency and allowed it an opportunity to modify its proposal.

NIE responds that based on its past experience in supporting research and development centers, it arrived at its level-of-effort estimate by first creating a cost estimate and then developing an illustrative model of how the level of effort might be divided based on these estimated costs.<sup>5</sup> The agency further states that while NIE

\* Director, Senior Researchers and Research Associates/ Assistants.

<sup>5</sup>In view of the inherent imprecision of cost estimates and the great weight accorded the agency's judgment as to the methods in developing a cost estimate, we find NIE's development of the estimate here to fall within the range of discretion permitted a contracting agency. Prospective Computer Analysts, B-203095, September 20, 1982, 82-2 CPD 234.

encouraged flexibility in the offerors' proposed staffing, the RFP's estimate signaled NIE's expectations regarding the overall size of the Center. NIE points out that Bank Street proposed a level of effort almost 50 percent below the government estimate.

The RFP placed offerors on notice of what the agency considered an appropriate level of effort for the Center and, we believe, adequately informed offerors that their proposals would be evaluated against these estimates. While the RFP clearly contemplated that the proposed level of effort could deviate to some extent from the RFP estimates, Bank Street's decision to propose an extremely "lean" lower cost model for the Center was a business judgment from which it assumed the risk that its proposal would be found not as advantageous to the government as one which proposed a level of effort for the Center more in line with that set forth in the RFP, at least in the absence of an explanation in the proposal as to why Bank Street believed it could meet all requirements with a significantly lower level of effort. Moreover, contrary to the protester's argument, the record shows that the Director did indicate how he believed Bank Street's low proposed level of effort would affect its ability to operate the Center. In this regard, the Director concluded that Bank Street's approach of proposing less than a full-time effort for the Center director raised doubts as to the Center director's ability to effectively direct the substance of the work and manage the consortium. Further, it is implicit in the Director's conclusion here that he simply believed that Bank Street's proposed staffing was not adequate to carry out the tasks it promised to complete.

In view of the significant difference between Bank Street's proposed level of effort and the RFP estimates, we find that the Director could reasonably conclude that the Harvard proposal (which contained a proposed level of effort much closer to the RFP estimate) was superior to Bank Street's proposal in this regard and thus that the Harvard proposal was more likely to meet the RFP requirements.

With respect to the alleged requirement for NIE to discuss with Bank Street its concern about Bank Street's proposed level of effort, in general, agencies are required to hold discussions with all offerors in the competitive range and this mandate can only be satisfied by discussions that are meaningful. Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134. We have specifically rejected the notion, however, that agencies are obligated to afford offerors all-encompassing negotiations. The content and extent of meaningful discussions in a given case are a matter of judgment primarily for the determination by the agency involved and not subject to question by our Office unless clearly arbitrary or without a reasonable basis. Information Network Systems, B-208009, March 17, 1983, 83-1 CPD 272. Where a proposal is considered to be acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of the proposal receiving less than a maximum ranking. Gould Defense Systems, Inc., et al., B-199392.3; B-199392.4, August 8, 1983, 83-2 CPD 174.

Bank Street was not informed during discussions of NIE's views regarding its level of effort simply because at the time the agency held discussions, the PRB was not concerned about Bank Street's proposed level of effort. It was not until after the submission of best and final offers that the Director concluded that he preferred Harvard's proposal, in part because its proposed level of effort was closer to the RFP estimate than was Bank Street's. Selection officials are expected to consider the various aspects of competing proposals when deciding on which proposal to accept, and there simply is no obligation on the part of the agency at that point in time to reopen negotiations to discuss an aspect in one proposal which the selection official sees as relatively less desirable.

#### Investigation of Non-Computer Technologies

In support of his choice of Harvard, the Director also stated that Harvard's proposal exhibited a better general understanding of the Center's purposes--i.e., to explore and exploit a wide range of technological applications and approaches--by proposing to study a broad mix of technologies to facilitate mathematics and science learning. By contrast, the Director noted, Bank Street proposed a narrower mix of technologies focusing almost exclusively on microcomputers.

Task 3 of the RFP required the successful offeror to "conduct a program of basic and applied research which has clear long-run implications for enhancing and stimulating technology's capacity to increase student learning and achievement." Included as examples of types of projects under this task were "human factor research aimed at improving the motivational qualities and other characteristics of child-machine interactions (e.g., touch-screen displays, natural language interaction) or research on reactive learning environments, expert systems, computer coaches, etc." It is clear, therefore, that the RFP contemplated investigation of other technologies in addition to computer technology. Consequently, we think that it was proper for an evaluator to rank a proposal favorably because of the proposal's strengths in this area.

Harvard proposed four projects under Task 3 designed to explore "what technologies or combinations of technologies show particular promise for improvement of education" and "what strategies seem best suited to the development of effective technology of and for education." The four projects were:

- (1) exploration of the potential use of school as a way of enhancing existing, demonstrably effective science television programs;
- (2) investigation of the ways in which inexpensive highly-reliable microcomputer-based speech recognition systems can contribute to the use of computers for early reading;
- (3) exploration of the use of different word-processing software to facilitate reading and writing instruction; and
- (4) assessment of the potential uses of high-cost devices used in industrial training programs (involving a microcomputer, a high-resolution video screen responsive to touch or light pens and an addressable videodisc player) in schools.

Bank Street proposed under Task 3 to study for the first 18 months "three classes of state-of-the-art software that have major educational potential" by surveying the field in each class, choosing an exemplary program, and investigating its educational use. While it expects

that in investigating these software systems it will use sophisticated hardware, Bank Street stated that it prefers "to investigate software systems that use sophisticated hardware, rather than studying complex devices per se" because the study of hardware innovations outside the context of their use in a software system is unlikely to lead to useful assessments. Under Task 2, subject-oriented research, Bank Street also proposed a study of science learning at home and in school involving integration of computers, interactive videodiscs and television. Finally, under this same task Bank Street proposed a study of an electronic mail network as an aid to class-work learning.

It appears from the Bank Street proposal that it did indeed intend to study a variety of technologies in conjunction with its study of software systems, science learning and the use of electronic mail networks. The Director nevertheless believed that Harvard's proposal was more innovative, intensive and involved a broader mix of technologies. While we think the Director's statement that the Bank Street proposal was focused "almost exclusively on its microcomputers" may be somewhat exaggerated, we have no basis upon which to question his judgment that Harvard's proposed studies in this area were more innovative and presented a greater potential to increase the state of knowledge regarding the application of technology to educational achievement.<sup>6</sup>

---

<sup>6</sup>Bank Street also argues that any concern NIE had regarding the use of technology should have been raised by the agency during discussions. These matters were not raised by the agency because (as in the case of the proposed level of effort) they were not viewed as concerns at the time NIE held discussions. For the reasons cited in connection with Bank Street's argument regarding NIE's failure to discuss the offeror's proposed level of effort, NIE was not obligated to reopen negotiations to discuss these aspects of the Bank Street proposal.



School-Based Activities

Another reason cited by the Director for his selection was that Harvard was more responsive to the RFP requirement of thoroughly involving school personnel in the work of the Center than Bank Street since Harvard included school districts and teachers in its consortium and in the Center's budget while Bank Street did not demonstrate an effective plan for the involvement of local schools. In this regard, the Director noted that Harvard's proposal identified three local school districts with which it had binding agreements while Bank Street had not specifically identified the schools with which it intended to work. Further, the Director cited as a weakness Bank Street's failure to include local schools in planning the Center's agenda.

The RFP placed significant emphasis on offerors' proposed school-based activities. It directed that the Center be structured so that "a significant part of the Center's structure will be school-based projects carried out cooperatively with local school systems." Specifically, it required that a minimum of 40 percent of the Center's programs per year be in the form of cooperative school-based activities and further specified that during the first 3 years of contract performance school-based activities should be "limited in geographical scope to schools in the New England states." The RFP defined "cooperative" as meaning that "the school system has been made a partner with the Center in the work and is not simply furnishing students as research subjects."

Task 2 of the RFP stated that some of the school-based activities should begin within 3 months of contract award, "to establish a visible presence in the schools and also a pattern of school relevance in the Center's activities." Task 2 further provided that the contractor should have developed its agreements with cooperating school districts for the school-based activities.

First, Bank Street contends that the Director failed to strictly follow the RFP evaluation criteria when he selected Harvard because the RFP required that the Center serve all of New England in the first 3 years, yet Harvard proposed to work with only three Massachusetts schools in the first 3 years of the Center's operation.

NIE responds that Harvard intended to start with three or possibly four school districts in Massachusetts and expand to include seven other New England districts in the remaining 2 years. It argues that this model for involvement of the schools represented "a more comprehensive approach for promoting intensive interaction with an entire school system in the planning, conduct, and evaluation of research and development activities."

While the RFP contemplated significant involvement of local schools in the Center's activities, it did not specify a minimum number of schools required nor did it require that the schools be located throughout New England. Harvard's best and final offer stated that it chose to work with only three schools initially "to make sure that we understand fully the differences among these systems . . . and to make sure that we can devote enough attention to each relationship for it to succeed." Harvard also stated that it would add a fourth (rural) district if the agency deemed it advisable, and indicated the extent to which local school involvement would increase over the term of the contract. We think this approach met the RFP's requirements.

Bank Street next contends that the RFP did not require that local school personnel be included as part of the Center management or that participating schools be identified prior to 3 months after contract award. Thus, the protester concludes, the Director improperly emphasized the fact that Harvard in its proposal designated the schools it intended to work with and joined them as part of its consortium, while penalizing Bank Street for failing to do so. It argues that its proposal included letters from over 30 schools expressing their willingness to work with Bank Street. Bank Street also argues that it did include in its proposal a strategy for involving local schools in planning the Center's agenda.

We note that the RFP stated that cooperative agreements--preferably written--should be worked out with local schools prior to implementing the school-based activities--some of which were to be started within 3 months after contract award. Although Bank Street states that it had expressions of willingness to cooperate from over 30 schools, it admittedly had not identified the specific schools with which it intended to work. While we agree

with Bank Street that the RFP did not require these schools to be identified or agreements to be finalized prior to award, we believe that the Director could reasonably conclude that Harvard was more likely to meet the solicitation's objective of expeditiously establishing a presence in the schools because it had identified its cooperating schools, had executed the cooperative agreements with them and proposed to include the schools and teachers as paid members of its consortium.

Finally, regarding Bank Street's proposed involvement of local schools in writing the research agenda, while Bank Street argues that its proposal included a strategy for such involvement, the Director considered this strategy--to hold meetings with chief state school officers and New England teachers--as not as desirable a plan as that proposed by Harvard which involved teachers and schools in its consortium as collaborators in agenda-setting and research design. We have no basis upon which to question the Director's judgment on this matter.

#### Dissemination Plan

The Director found that Harvard proposed an innovative approach to dissemination of the Center's work while Bank Street proposed a more traditional "direct-contact" approach that was "unoriginal" and has proven to be "unproductive" in past NIE-supported projects. Bank Street disputes this finding based on the PRB's conclusion that its dissemination strategy met the RFP requirements.

The PRB had little comment regarding either offerors' dissemination plans. While Bank Street clearly disagrees with the Director's conclusion that Harvard's dissemination plan was superior, it has not provided us with any basis upon which to question the Director's judgment that Harvard's plan would be more effective.

#### Organizational Management and Strength of Consortium

The Director concluded that Harvard's proposed management structure and the composition of its consortium were stronger than those proposed by Bank Street.

Regarding the management structure, the Director found that based on NIE's experience in managing research projects using many types of management approaches, Harvard's proposed hierarchical management structure (organized around institutional collaboration and relationships) would provide clear lines of authority and promote greater ease of management, as contrasted with Bank Street's matrix-like method of organization (organized around specific individuals and their roles on particular projects). Bank Street's method, according to the Director, "does not represent the most effective strategy to manage the time and effort of individuals from different organizations," and would make the Center highly vulnerable to staff changes.

Further, the Director stated that Harvard proposed an extremely comprehensive consortium involving ten major organizations, including three public school systems, a collaborative educational organization, an educational television organization, a national testing service, an educational development center, an educational foundation and a private high-technology firm. In contrast, the Director noted that Bank Street's consortium consisted of only two institutions of higher learning and one private firm and omitted educational practitioners as consortium members.

The protester objects to the Director's assessment, contending that Harvard's management plan was found by the PRB to be weak in several areas. For example, the PRB stated that the Harvard consortium might be too diverse to manage and that the role of each consortium partner was not spelled out. Further, Bank Street argues that its consortium consisted of members with greater experience in the fields relevant to the Center's functions and questions the Director's conclusion that Harvard's consortium was better just because it had more members and those members may be more well known.

Here, the protester does not question that differences did exist between the management structure and the make-up of the two competing consortia, but disputes the Director's judgment that Harvard's proposal was more advantageous in these areas. It is true, as Bank Street points out, that the PRB did have some misgivings regarding Harvard's proposed management structure and commented favorably on

the members of Bank Street's consortium. Nevertheless, the Director's finding regarding the relative merits of these portions of the proposals is not unreasonable. The Director reasonably could weigh favorably Harvard's inclusion of local schools in its consortium or believe that Harvard's centralized organization of its consortium members, many of which had existing working relationships with Harvard, would run more smoothly than Bank Street's team approach. It is simply a matter of informed judgment as to which organization structure or which consortium is better suited for the tasks to be performed.

#### HIGHER COST JUSTIFICATION

Bank Street contends that the Director failed to justify awarding the contract to Harvard in light of the fact that Harvard's proposed cost was approximately \$3 million more than Bank Street's cost estimate.

The record shows that the Director determined that the additional cost of the Harvard proposal was warranted by the quality of Harvard's proposed approach to the Center and by its greater proposed level of effort. The agency notes in this regard that while Harvard's higher proposed level of effort was responsible for much of the cost difference, a significant portion of that difference was due to Harvard's broad, eclectic and more costly research approach focused on a wide range of technological applications.

Bank Street responds that the Director's justification is inadequate to support a difference of the magnitude involved in this case and contends that while Harvard proposed a greater level of effort, this was not sufficient to justify the higher cost. It argues that some of the differences in cost can be accounted for by the fact that Harvard proposed to pay for teachers' services and research studies that Bank Street proposed to furnish at no cost. Thus, Bank Street concludes, the additional money "will not buy anything that Bank Street College did not offer."

The regulations state that when a cost-reimbursement type contract is to be awarded, estimated costs should not be controlling. Federal Procurement Regulations § 1-3.805-2. Further, in such negotiated procurements, selection officials have broad discretion in determining the manner

and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with established evaluation factors. Grey Advertising, Inc., supra. The judgment of the procuring agency concerning the significance of differences in the technical merit of offerors is accorded great weight. Thus, we have consistently upheld award to technically superior, higher cost offerors so long as that result is consistent with the evaluation criteria, and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Asset Incorporated, B-207045, February 14, 1983, 83-1 CPD 150.

Here, award to the higher cost, technically superior offeror is clearly consistent with the RFP's evaluation criteria which indicated that technical quality would be given greater priority than cost. Moreover, while Bank Street speculates that the differences in cost between the two proposals was because Harvard proposed to pay for what Bank Street proposed to provide at no additional cost, we have found that the Director reasonably determined that the Harvard proposal was technically superior in a number of areas, and thus represented the most advantageous proposal for the government. We have no basis for disputing his determination that this superiority justified the higher cost of the Harvard proposal.

#### DISCLOSURE OF GOVERNMENT COST ESTIMATE

Finally, Bank Street contends that the contracting officer violated Department of Education procurement regulations by disclosing the government's cost estimate to Harvard during discussions. It argues that once the contracting officer decided to share this information with Harvard it should also have disclosed it to Bank Street.

The agency's sole purpose in discussing the government's estimate with Harvard was an attempt to have Harvard lower its proposed costs. Since Bank Street's proposed cost was below the government's cost estimate, no useful purpose would have been served by discussing the estimate with Bank Street.

The record shows that in the course of discussions the agency informed Harvard<sup>7</sup> that the proposed cost in its initial proposal was approximately \$2 million more than the government's estimate. It also appears that the agency did not believe it was necessary to discuss the government's cost estimate with Bank Street because Bank Street's proposed cost was below that estimate.

The contracting officer admits that he failed to follow the agency's regulations regarding disclosure of the government's cost estimates. We believe, however, that those regulations are matters of internal policy guidance for the agency's personnel, and as such they do not create any legal rights or responsibilities such that actions taken in violation of their provisions would be subject to objection by our Office in protest cases. See Westinghouse Information Services, B-204225, March 17, 1982, 82-1 CPD 253; Timeplex, Inc., General Datacomm Systems and Bowman/ALI, Inc., B-197346; B-197346.2; B-197346.4, April 13, 1981, 81-1 CPD 280. Moreover, it is not improper generally for an agency to disclose, during discussions with an offeror, the agency's cost goal as a negotiation tool for reaching a fair and reasonable contract price provided an offeror's standing with respect to its competitors is not divulged. Ikard Manufacturing Company, B-213891, March 5, 1984, 63 Comp. Gen. \_\_\_\_\_, 84-1 CPD 266; 52 Comp. Gen. 425 (1973). Bank Street has not alleged that the agency disclosed any offeror's standing.

We also do not believe that the agency's discussion of the government's cost estimate with Harvard without conducting similar discussions with Bank Street amounted to unequal treatment of offerors. An agency is not required to hold the same kind of detailed discussions with all offerors since the degree of weaknesses or deficiencies, if any, found in the acceptable proposals will obviously vary. Pope Maintenance Corporation, B-206143.3, September 9, 1982, 82-2 CPD 218. Thus, an agency can discuss costs with one offeror without conducting similar discussions with another offeror, where, as here, it does not appear that the agency considers the other offeror's cost proposal to be deficient. Tracor Jitco Inc. B-208476, January 31, 1983, 83-1 CPD 98.

---

<sup>7</sup>NIE also informed MIT that its proposed costs exceeded the government estimate.

B-213209

In any event, Bank Street was not prejudiced by the disclosure. It contends that had it been informed of the government's cost estimate, it would have interpreted the RFP's level of effort estimate differently and would have proposed a greater effort. We believe, however, that the RFP adequately informed offerors of the level of effort the agency considered appropriate for the Center and the release of the government's cost estimate to Bank Street would not have provided any offeror with additional information regarding the appropriate level of effort that had not already been included in the RFP.

The protest is denied.

*for* *Milton J. Dowd*  
Comptroller General  
of the United States